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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 144

IOWA-ILLINOIS GAS AND ELECTRIC COMPANY, *Petitioner*

v.

EZRA TAFT BENSON, Individually and as SECRETARY OF AGRICULTURE, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Since it appears that the petition in this case has been held for the disposition of *Panama Canal Company* v. *Grace Line, Inc. et al.*, Nos. 251 and 252, petitioner submits this supplemental brief to point out why in the light of the decision in that case the petition in this case should now be granted.

This Court's decision in *Panama Canal* might well have been dispositive of this case, for the sole question

presented here of standing to sue under Section 10(a) of the Administrative Procedure Act as one adversely affected or aggrieved by agency action within the meaning of a relevant statute was also a question presented in *Panama Canal*. But this Court's decision of April 28, 1958, in that case is that the agency action complained of was "committed to agency discretion" and that judicial review was accordingly precluded by Section 10 of the Administrative Procedure Act. Since "agency discretion" is neither involved nor asserted in this case, the decision in *Panama Canal* is not dispositive of this case and affords no ground for denying the petition here.

Instead of agency discretion, this case involves a flat limitation on agency action which is fixed by statute and leaves no room for discretion—the central station service limitation of Section 4 of the Rural Electrification Act as amended, which authorizes the Administrator of the Rural Electrification Administration to make loans for the purpose of furnishing electric energy to persons "who are *not* receiving central station service." (Emphasis added). Significantly, at no time in the course of this action, have respondents suggested that the Administrator has any discretion to make a loan for the purpose of furnishing electricity to a person who is already receiving central station service. Also, respondents have not questioned that the term "central station service" while undefined in the Act means receiving electricity from a central generating station as distinguished from an individual generating unit, such as a Delco plant. Thus, this case does not present "matters on which experts may disagree" or [illegible]ice issues of judgment and choice, . . . which require the exercise of informed

discretion." Here, the statutory boundary which precludes making loans for furnishing electricity to persons already receiving central station service is simple and flat. Whether the complained of action transgresses it does not turn "on matters of doubtful or highly debatable inference from large or loose statutory terms, [where] the very construction of the statute is a distinct and profound exercise of discretion."

The fact that this Court, in deciding *Panama Canal*, did not reach the very important question of the availability of judicial review under Section 10(a) of the Administrative Procedure Act of agency action which is *not* committed to agency discretion points up the desirability of considering that question in this case, where it is presented in isolated and uncomplicated simplicity and without any assertion of agency discretion. For this and the other reasons which are elaborated in the petition and the reply brief filed in support thereof, it is respectfully urged that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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